

BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION
ASSESSMENT APPEALS COMMISSION

Appeal of:	HERMANN HOLTKAMP GREENHOUSES INC.)	
	Map 171-12-0, Parcel 17)	Davidson
	Farm Property)	County
	Tax Years 2001-2003)	

FINAL DECISION AND ORDER

Statement of the case

This is an appeal by the assessor from the initial decision and order of the administrative judge, who recommended the subject property be classified as tangible personal property rather than real property, with a resulting diminution in the real property assessment as follows:¹

<u>Classification</u>	<u>Land Value</u>	<u>Improvement</u>	<u>Total Value</u>	<u>Assessment</u>
Farm	\$43,668	\$905,100	\$948,768	\$237,192

The appeal to the Commission was heard in Nashville on December 13, 2005 before Commission members Stokes (presiding), Brooks, Ishie, Wade and White. Mr. Bryan Metcalf, an attorney, represented the taxpayer, and the assessor was represented by Assistant Metro Attorney Margaret Darby. By agreement the Commission's determination will extend to tax year 2003 as well as 2001-2002.

Findings of fact and conclusions of law

The subject property is a roughly 31 acre tract and various buildings including a frame residence, warehouses, seven greenhouses, and other structures located at 1501 Lischey Avenue in Nashville. The property is used primarily to grow African violets and begonias for wholesale distribution to nurseries and retailers. The greenhouses enclose some 436,000 square feet of space, about 200,000 s.f. involved in plant production. Metal frame and glass panels are bolted to concrete walls and foundations as well as to steel poles mounted on piers. In addition to the growing racks, the enclosures contain an employee cafeteria and restroom facilities. The structures are connected by plumbing pipes and conduit, and five large boilers provide climate control.

Mr. Holtkamp bought the property over ten years ago and has added additional greenhouse space. He testified he has not moved the greenhouses but

¹ As pointed out by the administrative judge, tangible personal property used for farm purposes ("other personal property") is deemed to have no assessable value by statute. Tenn. Code Ann. §67-5-901(a)(3)(A).

that to do so would be much less expensive than constructing new ones. He never protested the past assessments of the greenhouses as real property but decided to do so after hearing that greenhouses in Robertson County were assessed as personalty. Mr. Metcalf argued on the owner's behalf that the greenhouses were no less personalty than the grain bins at issue in *Harry J. Whelchel Co. v. King*, 610 S. W.2d 710 (Tenn. 1980), a sales tax case holding the bins to be personalty.

The assessor argues that smaller greenhouses were at issue in Robertson County, that larger greenhouses such as the subject properties are routinely classified as real property. She compared the Holtkamp greenhouses to the 500,000 gallon oil tanks found to be real property in *Magnavox Consumer Electronics v. King* 707 S. W. 2d 504 (Tenn. 1986). The Commission finds the assessor's arguments more compelling on this point. Compared to the 24 foot diameter grain bins and six attaching bolts in *Whelchel*, the greenhouses cover acres of ground and are intricately connected to the real property, including utilities comparable to commercial buildings. The greenhouses are clearly structures that shelter employees and fulfill many functions typically assigned to real property.

Both the *Whelchel* and *Magnavox* cases cite the same precedents, identifying as most important to these determinations, the intent behind the original act of annexing personalty to realty, as determinative of whether the personalty has become realty. Although clearly these greenhouses were intended to be moveable, perhaps to be reconfigured more efficiently to the operator's purposes, it is equally clear they were not intended to be moved. Though disassembly of the greenhouses is financially feasible and cheaper than constructing new ones, it is not a cost in money or time that an operator would willingly assume as part of an ongoing business. Taking down these significant structures and removing their extensive concrete foundations is a significant business displacement, not merely a matter of a few minutes unbolting as persuaded the court in *Whelchel*.

ORDER

It is therefore ORDERED, that the initial decision and order of the administrative judge is reversed and the subject property is determined to be real property. Accordingly we affirm the assessor's original assessment as follows:

<u>Classification</u>	<u>Land Value</u>	<u>Improvement</u>	<u>Total Value</u>	<u>Assessment</u>
Farm	\$43,668	\$3,205,100	\$3,248,768	\$812,192

This order is subject to:

1. Reconsideration by the Commission, in the Commission's discretion.

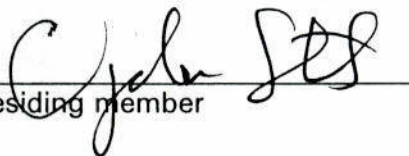
Reconsideration must be requested in writing, stating specific grounds for relief and the request must be filed with the Executive Secretary of the State Board within fifteen (15) days from the date of this order.

2. Review by the State Board of Equalization, in the Board's discretion. This review must be requested in writing, state specific grounds for relief, and be filed with the Executive Secretary of the State Board within fifteen (15) days from the date of this order.

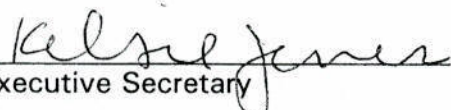
3. Review by the Chancery Court of Davidson County. A petition must be filed within sixty (60) days from the date of the official assessment certificate which will be issued when this matter has become final.

Requests for stay of effectiveness will not be accepted.

DATED: Mar 29, 2006


Presiding member

ATTEST:


Executive Secretary

cc: Mr. Bryan Metcalf, Esq.
Ms. Margaret Darby, Asst. Metro Atty.
Mr. John Allen, Staff Attorney, State Division of Property Assessments